

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOHNSON COUNTY GAS COMPANY, INC.)	
)	
<hr style="width:50%; margin-left:0"/>)	CASE NO. 91-392
)	
ALLEGED FAILURE TO COMPLY WITH)	
COMMISSION ORDER FROM CASE NO. 10415)	

O R D E R

Johnson County Gas, formerly a Kentucky Corporation which has now been administratively dissolved, provides gas service to approximately 537 customers in Johnson County, Kentucky. The Kentucky Municipal Gas Utility Investment Trust ("Trust") currently owns Johnson County Gas. This Trust was created under a plan of reorganization approved by the U.S. Bankruptcy Court. The Commonwealth of Kentucky and Columbia Gas of Kentucky, Inc. ("Columbia Gas") are the sole shareholders of the Trust. Estill Branham is responsible for day-to-day operations pursuant to a management contract. At the time the Trust was created, Johnson County Gas owed \$1,321,374 to the Department of Local Government and \$156,682 to Columbia Gas. In Case No. 10415,¹ the Commission accepted a settlement which authorized Johnson County Gas to assess a surcharge on its customer bills for the sole purpose of reducing the obligations to the Department of Local Government and Columbia

¹ Case No. 10415, Investigation of Johnson County Gas Company, Inc. Final Order dated October 30, 1990.

Gas.² All surcharge proceeds were to be escrowed and used exclusively for that purpose. No other use was permitted. At the same time the Commission placed reporting requirements³ on Johnson County Gas. It is from the Order in Case No. 10415 that the question of compliance arises.

On April 15, 1994, in the instant case the Commission ordered Johnson County Gas to provide certain information related to the surcharge. Johnson County Gas's response to the order indicated that while over \$300,000 in surcharge revenue was billed based upon sales between November 1990 and May 1994, only \$44,500 has been disbursed to the Department for Local Government and \$5,500 to Columbia Gas.⁴ Estill Branham has admitted under oath that the difference between the surcharge revenue billed and Johnson County Gas's debt payments was used for the operation of the Company.⁵

The question of whether Johnson County Gas, and specifically Estill Branham in his individual capacity, have complied with the terms of our October 30, 1990 Order in Case No. 10415 must be answered negatively. Estill Branham admits knowledge of the terms of the settlement,⁶ and acknowledges he signed the settlement on

² Id.

³ Id.

⁴ Johnson County Gas's response to April 15, 1994 Order.

⁵ Transcript of Evidence (T.E.) at 30-33. (All references to T.E. refer to transcript of July 6, 1994 hearing unless otherwise noted.)

⁶ T.E. at 18-21.

behalf of Johnson County Gas, thereby agreeing to the terms.⁷ Members of the Trust also signed the Settlement.

As the manager of the company, Estill Branham had control of and was responsible for collection and disbursement of the surcharge funds. Mr. Branham admitted that the surcharge monies were used to pay operating expenses of the company,⁸ a use which was not authorized by the Commission and was in direct violation of its order to escrow the surcharge proceeds. The record reflects that Estill Branham used the surcharge funds in part to pay contractual expenses to KISU Service Company, Inc.⁹ This company is, according to Mr. Branham, owned by his daughters who are also on the payroll of Johnson County Gas.¹⁰

Mr. Branham is familiar with and knowledgeable of the regulatory process, having operated several gas companies within the Commission's jurisdiction and having participated in numerous Commission proceedings during his long tenure in the gas business.¹¹ Mr. Branham should have sought rate relief from the Commission, if, in fact, operating revenues were insufficient to meet the company's obligations as they became due. Mr. Branham admits he sought no direction from the Trust regarding any

⁷ Id. at 18.

⁸ Id. at 30-33.

⁹ Id. at 68-69.

¹⁰ Id. at 15, 68.

¹¹ Id. at 11-12.

insufficiency of operating revenues.¹² Mr. Branham further admits that he used the surcharge proceeds to fund a \$30,000 working capital requirement allegedly directed by the Trust¹³ and which constitutes another unauthorized use under the specific terms of the settlement agreement.

The record reflects that actual collection of the surcharge funds from the customers began in November 1990, yet deposits to an escrow account did not begin until May 1992, several months after this case was initiated.¹⁴ Most disturbing to the Commission is the fact that \$288,348 of the billed surcharge was never deposited in the escrow account or remitted to the Department of Local Government or Columbia Gas.

After reviewing the record in this proceeding, the transcript of both hearings, and the responses provided by Mr. Branham, the Commission is left with the inescapable conclusion that Mr. Branham has acted knowingly, willfully, intentionally, and in flagrant disregard of the Orders of this Commission and the rights and interests of Johnson County Gas's customers. Accordingly, the Commission finds that Estill Branham should be penalized in his individual capacity, for his willful failure to comply with its prior Orders.

¹² Id. at 70.

¹³ Id. at 31-32.

¹⁴ Id. at 38-43.

Although a penalty is not being assessed against Johnson County Gas at this time, the Commission does not imply that the Trust has been blameless in this matter. Its role in allowing Mr. Branham to shuffle company funds at will, employ family members, and channel business through family owned and operated companies has been to the detriment of the customers served by Johnson County Gas. Allowing the funds collected from those customers for the express purpose of repaying debt owed to a governmental agency to be used for the purposes described above is an abuse of the public trust.

IT IS THEREFORE ORDERED that:

1. A penalty in the amount of \$2,000 is assessed against Estill Branham in his individual capacity for his willful failure to comply with the terms of the Commission's October 30, 1990 Order.

2. Estill Branham shall pay the assessed penalty from his personal funds within 20 days of the date of this Order by certified or cashier's check made payable to "Treasurer, Commonwealth of Kentucky." Said check shall be delivered to the Office of General Counsel, Public Service Commission of Kentucky, 730 Schenkel Lane, P. O. Box 615, Frankfort, Kentucky 40602.

3. Estill Branham shall within 2 working days of the date of this Order disburse not less than \$13,882, the balance of the cash surcharge escrow account as of September 31, 1994, according to the following pro rata distribution: Department of Local Government - 89 percent; Columbia Gas - 11 percent. Estill Branham shall

certify within 10 days to the Commission that same has been done in compliance with this Order.

4. Estill Branham and Johnson County Gas shall within 14 days of the date of this Order file a plan providing for the complete repayment of the existing obligations to the Department of Local Government and Columbia Gas.

Done at Frankfort, Kentucky, this 14th day of November, 1994.

PUBLIC SERVICE COMMISSION

Robert M. Davis
Vice Chairman

Linda K. Beathott
Commissioner

Chairman George Edward Overbey, Jr. recused himself in this case. The Chairman sits as a member of the Kentucky Gas System Restoration Review Board, which body has dealt with a number of issues in common with those confronting the PSC in this case.

ATTEST:

Don Mills
Executive Director